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AMENDED IN ASSEMBLY JUNE 1, 1999
AMENDED IN ASSEMBLY MAY 18, 1999

CALIFORNIA LEGISLATURE—1999–2000 REGULAR SESSION

ASSEMBLY BILL

No. 1127

Introduced by Assembly Member Steinberg

February 25, 1999

An act to amend Sections 98.7, 6302, 6304.5, 6308, 6309, ~~6315.5, 6317,~~ 6323, 6324, 6325, 6400, 6423, 6425, 6427, 6428, 6429, 6430, ~~6432, and 6435~~ and 6432 of, to add Sections ~~6424~~ 6319.1, 6424, and 6719 to, and to repeal Section 6434 of, the Labor Code, relating to employee safety.

LEGISLATIVE COUNSEL'S DIGEST

AB 1127, as amended, Steinberg. Employee safety: violations.

Under existing law, any person who believes that he or she has been discharged or otherwise discriminated against in violation of the Labor Code under the jurisdiction of the Labor Commissioner may file a complaint with the Division of Labor Standards Enforcement within 30 days after the occurrence of the violation.

This bill would extend from 30 days to one year that period of time within which a complaint may be filed with the division.

Under the California Occupational Safety and Health Act of 1973 (hereafter the act), the term “serious exposure” is

defined for purposes of establishing a violation of standards and orders of the Occupational Safety and Health Standards Board (hereafter the standards board) governing employee safety.

This bill would include within the definition of a serious exposure, for those purposes, any exposure in excess of an established permissible exposure limit.

Existing law provides that the provisions of the act have no application to, may not be considered in, and may not be admitted into, evidence in any personal injury or wrongful death action arising after January 1, 1972, except as between an employee and his or her employer.

This bill instead would provide that neither the issuance of, or failure to issue, a citation by the Division of Occupational Safety and Health (hereafter the division) has any application to, nor may be considered in, nor may be admitted into, evidence in any personal injury or wrongful death action, except as between an employee and his or her employer. The bill also would provide that the act and the occupational safety and health standards and orders promulgated under the Labor Code may have application to, may be considered in, or may be admissible into, evidence in any personal injury or wrongful death action.

Existing law provides that if the division secures a complaint from an employee, the employee's representative, or an employer of the employee directly involved in an unsafe place of employment, that his or her employment or place of employment is not safe, the division is required to summarily investigate the complaint as soon as possible, but not later than 3 working days after receipt of a complaint charging a serious violation, and not later than 14 days after receipt of a complaint charging a nonserious violation. Under existing law the division is not required to respond to a complaint if it determines that either the complaint is intended to willfully harass an employer or is without reasonable basis.

This bill also would require the division to conduct those investigations if a complaint is received by the employee's representative, including, but not limited to, an attorney, health or safety professional, union representative, family member, or representative of a government agency. The bill



would also provide that the division is not required to respond to a complaint if, from the facts stated in the complaint, it determines that the complaint is intended to willfully harass an employer and is without any reasonable basis.

~~Existing law states that all occupational safety and health standards and orders, rules, regulations, findings, and decisions of the division made and entered pursuant to the act are admissible as evidence in any prosecution for the violation of the act.~~

~~This bill instead would provide that all occupational safety and health standards and orders are admissible as evidence in any civil or criminal matter.~~

Existing law authorizes the division to issue a citation to an employer requiring the abatement of a violation of the act.

This bill would prohibit a citation requiring abatement from being stayed ~~unless the employer establishes good cause for a stay of the citation requiring abatement, as specified, and if~~ the division makes specified findings pertaining to employee safety and health, *except that the employer would be authorized to file a motion requesting that the period for abatement be stayed during the appeal proceedings.*

Existing law provides that if the condition of any employment or place of employment or the operation of any machine, device, apparatus, or equipment constitutes a serious menace to the lives or safety of persons about it, the division may apply to the superior court of the county in which the place of employment, machine, device, apparatus, or equipment is located for an injunction restraining the use or operation of the machine, device, apparatus, or equipment until the condition is corrected. Existing law requires an affidavit to accompany that application showing the place of employment, machine, device, apparatus, or equipment is being operated in violation of specified requirements and that its use or operation constitutes a menace to the life or safety of any person employed thereabout.

This bill would instead authorize the division to apply to the superior court of the county in which the place of employment or employee is located for an injunction under those circumstances. The bill would also require the affidavit accompanying that application to show that the use or

operation of the machine, device, apparatus, equipment, or process violates the specified requirements and constitutes a menace to the life or safety of any person employed thereabout or is likely to cause death, serious injury or illness, or serious exposure to an employee.

Existing law provides that every employer, and every officer, management official, or supervisor having direction, management, control, or custody of any employment, place of employment, or other employee is guilty of a misdemeanor if it, among other things, knowingly or negligently violates any standard, order, or special order, or any of certain provisions of law, or part thereof, authorized by the act, the violation of which is deemed to be a serious violation, as defined.

This bill would also make conforming changes to other provisions of law that impose civil and criminal penalties on employers for violation of specified occupational safety and health requirements. The bill would increase from \$5,000 to \$25,000 the maximum fine that may be imposed for a violation of those provisions. The bill also would increase the length of incarceration and the monetary penalties that may be imposed for a willful or repeated violation of certain employee safety standards that cause death to any employee, or cause permanent or prolonged impairment of the body of any employee. The bill also would authorize a court to impose a fine in an amount less than certain minimums specified in the bill if the court finds that it is in the interest of justice to do so and states its findings and reasons on the record.

Existing law prohibits civil penalties from being assessed against employers that are governmental agencies for violations of certain employee safety standards.

This bill would repeal that prohibition.

Existing law requires the standards board, on or before January 1, 1995, to adopt standards for ergonomics in the workplace designed to minimize the instances of injury from repetitive motion.

~~This bill would repeal that provision and instead would require the standards board to enforce specified standards applicable to a job, process, or operation governing the prevention of repetitive motion injuries~~ *reaffirm the standards board's continuing duty to adopt those standards.*



By making certain violations of employee safety standards by employers subject to criminal penalties, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 98.7 of the Labor Code is
2 amended to read:

3 98.7. (a) Any person who believes that he or she has
4 been discharged or otherwise discriminated against in
5 violation of this code under the jurisdiction of the Labor
6 Commissioner may file a complaint with the division
7 within one year after the occurrence of the violation. The
8 one-year period may be extended for good cause. The
9 complaint shall be investigated by a discrimination
10 complaint investigator in accordance with this section.
11 The Labor Commissioner shall establish procedures for
12 the investigation of discrimination complaints. A
13 summary of the procedures shall be provided to each
14 complainant and respondent at the time of initial contact.
15 The Labor Commissioner shall inform complainants
16 charging a violation of Section 6310 or 6311, at the time
17 of initial contact, of his or her right to file a separate,
18 concurrent complaint with the United States
19 Department of Labor within 30 days after the occurrence
20 of the violation.

21 (b) Each complaint of unlawful discharge or
22 discrimination shall be assigned to a discrimination
23 complaint investigator who shall prepare and submit a
24 report to the Labor Commissioner based on an
25 investigation of the complaint. The Labor Commissioner
26 may designate the chief deputy or assistant Labor

1 Commissioner or the chief counsel to receive and review
2 the reports. The investigation shall include, where
3 appropriate, interviews with the complainant,
4 respondent, and any witnesses who may have
5 information concerning the alleged violation, and a
6 review of any documents which may be relevant to the
7 disposition of the complaint. The identity of witnesses
8 shall remain confidential unless the identification of the
9 witness becomes necessary to proceed with the
10 investigation or to prosecute an action to enforce a
11 determination. The investigation report submitted to the
12 Labor Commissioner or designee shall include the
13 statements and documents obtained in the investigation,
14 and the findings of the investigator concerning whether
15 a violation occurred. The Labor Commissioner may hold
16 an investigative hearing whenever the Labor
17 Commissioner determines, after review of the
18 investigation report, that a hearing is necessary to fully
19 establish the facts. In the hearing the investigation report
20 shall be made a part of the record and the complainant
21 and respondent shall have the opportunity to present
22 further evidence. The Labor Commissioner shall issue,
23 serve, and enforce any necessary subpoenas.

24 (c) If the Labor Commissioner determines a violation
25 has occurred, he or she shall notify the complainant and
26 respondent and direct the respondent to cease and desist
27 from the violation and take such action as is deemed
28 necessary to remedy the violation, including, where
29 appropriate, rehiring or reinstatement, reimbursement
30 of lost wages and interest thereon, payment of reasonable
31 attorney's fees associated with any hearing held by the
32 Labor Commissioner in investigating the complaint, and
33 the posting of notices to employees. If the respondent
34 does not comply with the order within 10 working days
35 following notification of the Labor Commissioner's
36 determination, the Labor Commissioner shall bring an
37 action promptly in an appropriate court against the
38 respondent. If the Labor Commissioner fails to bring an
39 action in court promptly, the complainant may bring an
40 action against the Labor Commissioner in any

1 appropriate court for a writ of mandate to compel the
2 Labor Commissioner to bring an action in court against
3 the respondent. If the complainant prevails in his or her
4 action for a writ, the court shall award the complainant
5 court costs and reasonable attorney's fees,
6 notwithstanding any other provision of law. Regardless of
7 any delay in bringing an action in court, the Labor
8 Commissioner shall not be divested of jurisdiction. In any
9 such action, the court may permit the claimant to
10 intervene as a party plaintiff to the action and shall have
11 jurisdiction, for cause shown, to restrain the violation and
12 to order all appropriate relief. Appropriate relief
13 includes, but is not limited to, rehiring or reinstatement
14 of the complainant, reimbursement of lost wages and
15 interest thereon, and any other compensation or
16 equitable relief as is appropriate under the circumstances
17 of the case. The Labor Commissioner shall petition the
18 court for appropriate temporary relief or restraining
19 order unless he or she determines good cause exists for
20 not doing so.

21 (d) If the Labor Commissioner determines no
22 violation has occurred, he or she shall notify the
23 complainant and respondent and shall dismiss the
24 complaint. The Labor Commissioner may direct the
25 complainant to pay reasonable attorney's fees associated
26 with any hearing held by the Labor Commissioner if the
27 Labor Commissioner finds the complaint was frivolous,
28 unreasonable, groundless, and was brought in bad faith.
29 The complainant may, after notification of the Labor
30 Commissioner's determination to dismiss a complaint,
31 bring an action in an appropriate court, which shall have
32 jurisdiction to determine whether a violation occurred,
33 and if so, to restrain the violation and order all
34 appropriate relief to remedy the violation. Appropriate
35 relief includes, but is not limited to, rehiring or
36 reinstatement of the complainant, reimbursement of lost
37 wages and interest thereon, and such other compensation
38 or equitable relief as is appropriate under the
39 circumstances of the case. When dismissing a complaint,
40 the Labor Commissioner shall advise the complainant of

1 his or her right to bring an action in an appropriate court
2 if he or she disagrees with the determination of the Labor
3 Commissioner, and in the case of an alleged violation of
4 Section 6310 or 6311, to file a complaint against the state
5 program with the United States Department of Labor.

6 (e) The Labor Commissioner shall notify the
7 complainant and respondent of his or her determination
8 under subdivision (c) or (d), not later than 60 days after
9 the filing of the complaint. Determinations by the Labor
10 Commissioner under subdivision (c) or (d) may be
11 appealed by the complainant or respondent to the
12 Director of Industrial Relations within 10 days following
13 notification of the determination. The appeal shall set
14 forth specifically and in full detail the grounds upon
15 which the appealing party considers the Labor
16 Commissioner's determination to be unjust or unlawful,
17 and every issue to be considered by the director. The
18 director may consider any issue relating to the initial
19 determination and may modify, affirm, or reverse the
20 Labor Commissioner's determination. The director's
21 determination shall be the determination of the Labor
22 Commissioner. The director shall notify the complainant
23 and respondent of his or her determination within 10 days
24 of receipt of the appeal.

25 (f) The rights and remedies provided by this section
26 do not preclude an employee from pursuing any other
27 rights and remedies under any other provisions of law.

28 SEC. 2. Section 6302 of the Labor Code is amended to
29 read:

30 6302. As used in this division:

31 (a) "Director" means the Director of Industrial
32 Relations.

33 (b) "Department" means the Department of
34 Industrial Relations.

35 (c) "Insurer" includes the State Compensation
36 Insurance Fund and any private company, corporation,
37 mutual association, and reciprocal or interinsurance
38 exchange, authorized under the laws of this state to insure
39 employers against liability for compensation under this
40 part and under Division 4 (commencing with Section

1 3201), and any employer to whom a certificate of consent
2 to self-insure has been issued.

3 (d) "Division" means the Division of Occupational
4 Safety and Health.

5 (e) "Standards board" means the Occupational Safety
6 and Health Standards Board, within the department.

7 (f) "Appeals board" means the Occupational Safety
8 and Health Appeals Board, within the department.

9 (g) "Aquaculture" means a form of agriculture as
10 defined in Section 17 of the Fish and Game Code.

11 (h) "Serious injury or illness" means any injury or
12 illness occurring in a place of employment or in
13 connection with any employment which requires
14 inpatient hospitalization for a period in excess of 24 hours
15 for other than medical observation or in which an
16 employee suffers a loss of any member of the body or
17 suffers any serious degree of permanent disfigurement,
18 but does not include any injury or illness or death caused
19 by the commission of a violation of the Penal Code, except
20 the violation of Section 385 of the Penal Code, or an
21 accident on a public street or highway.

22 (i) "Serious exposure" means any exposure of an
23 employee to a hazardous substance when the exposure
24 occurs as a result of an incident, accident, emergency, or
25 exposure over time and is in a degree or amount sufficient
26 to create a substantial probability that death or serious
27 physical harm in the future could result from the
28 exposure.

29 ~~(j) "Serious physical harm" means any of the~~
30 ~~following:~~

31 ~~(1) Any injury involving a temporary, prolonged, or~~
32 ~~permanent impairment of the body in which any part of~~
33 ~~the body is rendered functionally useless or substantially~~
34 ~~reduced in efficiency on or off the job.~~

35 ~~(2) Any illness involving a condition that may shorten~~
36 ~~life or significantly reduce physical or mental efficiency~~
37 ~~by inhibiting the normal function of a part of the body.~~

38 ~~(3) Any injury or illness that results in temporary or~~
39 ~~permanent disability.~~

1 SEC. 3. Section 6304.5 of the Labor Code is amended
2 to read:

3 6304.5. It is the intent of the Legislature that the
4 provisions of this division, and the occupational safety and
5 health standards and orders promulgated under this
6 code, are applicable to proceedings against employers for
7 the exclusive purpose of maintaining and enforcing
8 employee safety.

9 Neither the issuance of, or failure to issue, a citation by
10 the division shall have any application to, nor be
11 considered in, nor be admissible into, evidence in any
12 personal injury or wrongful death action, except as
13 between an employee and his or her own employer. This
14 division and the occupational safety and health standards
15 and orders promulgated under this code may have
16 application to, be considered in, or be admissible into,
17 evidence in any personal injury or wrongful death action.

18 SEC. 4. Section 6308 of the Labor Code is amended to
19 read:

20 6308. In enforcing this division, occupational safety
21 and health standards, orders, and special orders, the
22 division may do any of the following:

23 (a) Declare and prescribe the safety devices,
24 safeguards, or other means or methods of protection that
25 are well adapted to render the employees of every
26 employment and place of employment safe as required
27 by law or lawful order.

28 (b) Enforce Section 25910 of the Health and Safety
29 Code and standards and orders adopted by the standards
30 board pursuant to Chapter 6 (commencing with Section
31 140) of Division 1 of the Labor Code, for the installation,
32 use, maintenance, and operation of reasonable uniform
33 safety devices, safeguards, and other means or methods
34 of protection, which are necessary to carry out all laws
35 and lawful standards or special orders relative to the
36 protection of the life and safety of employees in
37 employments and places of employment.

38 (c) Require the performance of any other act that is
39 reasonably necessary for the protection of the life and

1 safety of the employees in employments and places of
2 employment.

3 An employer may request a hearing on a special order
4 or action ordered pursuant to this section, at which the
5 employer, owner, or any other person may appear. The
6 appeals board shall conduct the hearing at the earliest
7 possible time.

8 All orders, rules, regulations, findings, and decisions of
9 the division made or entered under this part, except
10 special orders and action orders, may be reviewed by the
11 Supreme Court and the courts of appeal as may be
12 provided by law.

13 SEC. 5. Section 6309 of the Labor Code is amended to
14 read:

15 6309. If the division learns or has reason to believe
16 that any employment or place of employment is not safe
17 or is injurious to the welfare of any employee, it may, of
18 its own motion, or upon complaint, summarily investigate
19 the employment or place of employment, with or without
20 notice or hearings. However, if the division secures a
21 complaint from an employee, the employee's
22 representative, including, but not limited to, an attorney,
23 health or safety professional, union representative, family
24 member, or representative of a government agency, or
25 an employer of an employee directly involved in an
26 unsafe place of employment, that his or her employment
27 or place of employment is not safe, it shall, with or without
28 notice or hearing, summarily investigate the
29 employment or place of employment as soon as possible,
30 but not later than three working days after receipt of a
31 complaint charging a serious violation, and not later than
32 14 calendar days after receipt of a complaint charging a
33 nonserious violation. The division shall attempt to
34 determine the period of time in the future that the
35 complainant believes the unsafe condition may continue
36 to exist, and shall allocate inspection resources so as to
37 respond first to those situations in which time is of the
38 essence. For purposes of this section, a complaint shall be
39 deemed to allege a serious violation if the division
40 determines that the complaint charges that there is a

1 substantial probability that death or serious physical harm
2 could result from a condition which exists, or from one or
3 more practices, means, methods, operations, or processes
4 which have been adopted or are in use in a place of
5 employment. All other complaints shall be deemed to
6 allege nonserious violations. The division may enter and
7 serve any necessary order relative thereto. The division
8 is not required to respond to any complaint within this
9 period ~~if~~ *where*, from the facts stated in the complaint, it
10 determines that the complaint is intended to willfully
11 harass an employer ~~and~~ *or* is without any reasonable basis.

12 The division shall keep complete and accurate records
13 of any complaints, whether verbal or written, and shall
14 inform the complainant, whenever his or her identity is
15 known, of any action taken by the division in regard to the
16 subject matter of the complaint, and the reasons for the
17 action. The records of the division shall include the dates
18 on which any action was taken on the complaint, or the
19 reasons for not taking any action on the complaint. The
20 division shall, pursuant to authorized regulations,
21 conduct an informal review of any refusal by a
22 representative of the division to issue a citation with
23 respect to any alleged violation. The division shall furnish
24 the employee or the representative of employees
25 requesting the review a written statement of the reasons
26 for the division's final disposition of the case.

27 The name of any person who submits to the division a
28 complaint regarding the unsafeness of an employment or
29 place of employment shall be kept confidential by the
30 division, unless that person requests otherwise.

31 The requirements of this section shall not relieve the
32 division of its requirement to inspect and assure that all
33 places of employment are safe and healthful for
34 employees. The division shall maintain the capability to
35 receive and act upon complaints at all times.

36 ~~SEC. 6. Section 6315.5 of the Labor Code is amended~~
37 ~~to read:~~

38 ~~6315.5. All occupational safety and health standards~~
39 ~~and orders are admissible as evidence in any civil or~~
40 ~~criminal matter, and shall, in any such action, be~~

1 ~~presumed to be reasonable and lawful and to fix a~~
2 ~~reasonable and proper requirement of safety unless, prior~~
3 ~~to the institution of the action, proceedings for a hearing~~
4 ~~on a special order are instituted, or a petition is filed~~
5 ~~under Section 11426 of the Government Code.~~

6 ~~SEC. 7. Section 6317 of the Labor Code is amended to~~
7 ~~read:~~

8 ~~6317. (a) If, upon inspection or investigation, the~~
9 ~~division believes that an employer has violated Section~~
10 ~~25910 of the Health and Safety Code, any standard, rule,~~
11 ~~order, or regulation established pursuant to Chapter 6~~
12 ~~(commencing with Section 140) of Division 1 of the Labor~~
13 ~~Code, or any provision of this division, including any~~
14 ~~standard, rule, order, or regulation established pursuant~~
15 ~~to this division, it shall with reasonable promptness issue~~
16 ~~a citation to the employer. Each citation shall be in~~
17 ~~writing and shall describe with particularity the nature of~~
18 ~~the violation, including a reference to the provision of the~~
19 ~~code, standard, rule, regulation, or order alleged to have~~
20 ~~been violated. In addition, the citation shall fix a~~
21 ~~reasonable time for the abatement of the alleged~~
22 ~~violation. The period specified for abatement does not~~
23 ~~commence until the date the citation or notice is received~~
24 ~~by certified mail and the certified mail receipt is signed,~~
25 ~~or if not signed, the date the return is made to the post~~
26 ~~office. If the division officially and directly delivers the~~
27 ~~citation or notice to the employer, the period specified for~~
28 ~~abatement commences on the date of the delivery.~~

29 ~~A citation requiring abatement may not be stayed by~~
30 ~~the filing of an appeal, except as provided in this~~
31 ~~subdivision. Upon an application accompanied by~~
32 ~~declarations and exhibits, submitted under penalty of~~
33 ~~perjury, an employer may petition the appeals board for~~
34 ~~a stay of abatement pending appeal at the time the~~
35 ~~employer files a notice of appeal. The employer shall have~~
36 ~~the burden of establishing good cause for a stay of the~~
37 ~~citation requiring abatement. Within five business days of~~
38 ~~the date of receipt of the notice of appeal and request for~~
39 ~~stay of abatement pending appeal, the division may~~
40 ~~respond to the employer's declarations and exhibits, and~~

1 the division also may request an expedited hearing.
2 Within 10 business days, the appeals board shall consider
3 the evidence submitted by the employer and the division,
4 and shall consider oral testimony if the division requests
5 an expedited hearing, and upon all the evidence and
6 proceedings may grant a stay of abatement pending
7 appeal if it finds that (1) no employee may be exposed to
8 the unsafe or unhealthful condition or (2) that the
9 condition is not likely to cause death, serious injury or
10 illness, or serious exposure to any employee.

11 (b) A “notice” in lieu of citation may be issued with
12 respect to violations found in an inspection or
13 investigation which meet either of the following
14 requirements:

15 (1) The violations do not have a direct relationship
16 upon the health or safety of an employee.

17 (2) The violations do not have an immediate
18 relationship to the health or safety of an employee, and
19 are of a general or regulatory nature. A notice in lieu of
20 a citation may be issued only if the employer agrees to
21 correct the violations within a reasonable time, as
22 specified by the division, and agrees not to appeal the
23 finding of the division that the violations exist. A notice
24 issued pursuant to this paragraph shall have the same
25 effect as a citation for purposes of establishing repeat
26 violations or a failure to abate. Every notice shall clearly
27 state the abatement period specified by the division, that
28 the notice may not be appealed, and that the notice has
29 the same effect as a citation for purposes of establishing
30 a repeated violation or a failure to abate. The employer
31 shall indicate agreement to the provisions and conditions
32 of the notice by his or her signature on the notice.

33 A notice may not be issued in lieu of a citation if the
34 violations are serious, repeated, willful, or arise from a
35 failure to abate.

36 The director shall prescribe guidelines for the issuance
37 of these notices.

38 The division may impose a civil penalty against an
39 employer as specified in Chapter 4 (commencing with
40 Section 6423) of this part. A notice in lieu of a citation may

~~not be issued if the number of first instance violations found in the inspection (other than serious, willful, or repeated violations) is 10 or more violations.~~

~~No citation or notice shall be issued by the division for a given violation or violations after six months have elapsed since occurrence of the violation.~~

~~The director shall prescribe procedures for the issuance of a citation or notice.~~

~~The division shall prepare and maintain records capable of supplying an inspector with previous citations and notices issued to an employer.~~

~~SEC. 8.—~~

SEC. 6. Section 6319.1 is added to the Labor Code, to read:

6319.1. (a) Notwithstanding any other provision of law, if the division, or its authorized representative, determines that an alleged violation is serious and presents such a substantial risk to the safety or health of employees that the initiation of an appeal by the employer should not suspend the running of the period for abatement of that violation, the citation issued pursuant to Section 6317 shall include a statement of that determination.

(b) (1) If a citation issued pursuant to Section 6317 includes a statement of the division's determination as provided in subdivision (a), the employer may, concurrent with the timely initiation of appeal proceedings as to the alleged violation, file a motion requesting that the running of the period for abatement of that violation be suspended during the appeal proceedings. The appeals board shall conduct an expedited hearing on the employer's motion within 15 days of the filing of the motion and shall, in deciding that motion, balance the extent of any irreparable injury to the employer as a result of abatement of the alleged violation during the pendency of appeal proceedings, and the nature and degree of risk posed to employees by the employer's failure to immediately abate that violation. The appeals board shall also consider the likely success of the employer's appeal with respect to the alleged

1 violation, whether that appeal is initiated in good faith
2 and not for the purpose of delay or the avoidance of
3 penalties, and whether the division's determination is
4 unreasonable under the circumstances.

5 (2) In all cases where the employer files a motion as
6 described in paragraph (1), the appeals board shall
7 expedite the consideration and decision of the employer's
8 appeal with respect to the alleged violation, and give that
9 appeal priority over all other matters, except matters of
10 a like kind.

11 (3) In its decision on the appeal with respect to the
12 alleged violation, the appeals board may modify the
13 citation's direction that the period for the abatement of
14 the alleged violation not be suspended.

15 (c) Nothing in this section shall be construed to limit
16 the authority of the division to proceed under Section
17 6325, but the division may not proceed simultaneously
18 under this section and under Section 6325 as to any
19 individual alleged violation contained within any
20 individual citation.

21 SEC. 7. Section 6323 of the Labor Code is amended to
22 read:

23 6323. If the condition of any employment or place of
24 employment or the operation of any machine, device,
25 apparatus, equipment, or process constitutes a serious
26 menace to the lives or safety of persons about it, the
27 division may apply to the superior court of the county in
28 which the place of employment or employee is situated,
29 for an injunction restraining the use or operation thereof
30 until the condition is corrected.

31 ~~SEC. 9.—~~

32 SEC. 8. Section 6324 of the Labor Code is amended to
33 read:

34 6324. An application to the superior court for an
35 injunction shall be accompanied by an affidavit showing
36 that a place of employment, machine, device, apparatus,
37 equipment, or process is being operated in violation of a
38 safety order or standard, or in violation of Section 25910
39 of the Health and Safety Code, and that the use or
40 operation constitutes a menace to the life or safety of any

1 person employed thereabout or is likely to cause death,
2 serious injury or illness, or serious exposure to an
3 employee. The affidavit shall be accompanied by a copy
4 of the order or standard applicable thereto. The
5 application and affidavit are a sufficient prima facie
6 showing to warrant, in the discretion of the court, the
7 immediate granting of a temporary restraining order. No
8 bond shall be required from the division or any other state
9 or local prosecutor as a prerequisite to the granting of any
10 restraining order.

11 ~~SEC. 10.~~—

12 *SEC. 9.* Section 6325 of the Labor Code is amended to
13 read:

14 6325. If, in the opinion of the division, a place of
15 employment, machine, device, apparatus, or equipment,
16 or any part thereof, is in a dangerous condition, or if a
17 machine, device, apparatus, or piece of equipment is not
18 properly guarded or is dangerously placed so as to
19 constitute an imminent hazard to employees, or is likely
20 to cause death, serious injury or illness, or serious
21 exposure to an employee, entry therein, or the use
22 thereof, as the case may be, shall be prohibited by the
23 division, and a conspicuous notice to that effect shall be
24 posted thereon. The prohibition of use shall be limited to
25 the immediate area in which the imminent hazard or
26 condition exists, and the division shall not prohibit any
27 entry in or use of a place of employment, machine,
28 device, apparatus, or equipment, or any part thereof,
29 which is outside the area of imminent hazard or
30 condition. The notice only may be removed by an
31 authorized representative of the division if the place of
32 employment, machine, device, apparatus, or equipment
33 is made safe and the required safeguards or safety
34 appliances or devices are provided. This section does not
35 prevent the entry or use with the division's knowledge
36 and permission for the sole purpose of eliminating the
37 dangerous conditions.

38 ~~SEC. 11.~~—

39 *SEC. 10.* Section 6400 of the Labor Code is amended
40 to read:

6400. Every employer shall furnish employment and a place of employment that are safe and healthful for the employees therein. "Employer" includes, but is not limited to, a person in a multiemployer place of employment who, with respect to any other employee at the place of employment, does any of the following:

(a) Employs the exposed employee.

(b) Creates the hazard.

(c) Is responsible, by contract or through practice, for safety and health conditions.

(d) Is responsible for correcting the hazard.

~~SEC. 12.—~~

SEC. 11. Section 6423 of the Labor Code is amended to read:

6423. Except where another penalty is specifically provided, every employer and every officer, management official, or supervisor having direction, management, control, or custody of any employment, place of employment, or of any other employee, who does any of the following is guilty of a misdemeanor:

(a) Knowingly or negligently violates any standard, order, or special order, or any provision of this division, or of any part thereof in, or authorized by, this part the violation of which is deemed to be a serious violation pursuant to Section 6432.

(b) Repeatedly violates any standard, order, or special order, or provision of this division, or any part thereof in, or authorized by, this part, which repeated violation creates a real and apparent hazard to employees.

(c) Fails or refuses to comply, after notification and expiration of any abatement period, with any such standard, order, special order, or provision of this division, or any part thereof, which failure or refusal creates a real and apparent hazard to employees.

(d) Directly or indirectly, knowingly induces another to commit any of the acts in subdivisions (a), (b), or (c).

Any violation of the provisions of subdivision (b), (c), or (d) of this section is punishable by imprisonment in a county jail for a term not exceeding one year, or by a fine not exceeding twenty-five thousand dollars (\$25,000), or

1 by both that imprisonment and fine. If the defendant is
2 a corporation or a limited liability company, the fine shall
3 not be less than twenty-five thousand dollars (\$25,000),
4 but may not exceed two hundred fifty thousand dollars
5 (\$250,000). However, a court may impose a fine for a
6 violation of this section by a corporation in an amount less
7 than twenty-five thousand dollars (\$25,000) if the court
8 finds that it is in the interest of justice to do so and states
9 its findings and reasons on the record.

10 ~~SEC. 13.—~~

11 *SEC. 12.* Section 6424 is added to the Labor Code, to
12 read:

13 6424. For purposes of construing the criminal
14 provisions of this chapter, to the extent that a word or
15 term of this chapter is defined in Section 7 of the Penal
16 Code, the definitions of Section 7 of the Penal Code
17 govern the interpretation of that word or term.

18 ~~SEC. 14.—~~

19 *SEC. 13.* Section 6425 of the Labor Code is amended
20 to read:

21 6425. (a) Any employer and any employee having
22 direction, management, control, or custody of any
23 employment, place of employment, or of any other
24 employee, who willfully violates any occupational safety
25 or health standard, order, or special order, or any
26 provision of this division or of Section 25910 of the Health
27 and Safety Code, and that violation caused death to any
28 employee, or caused permanent or prolonged
29 impairment of the body of any employee, is guilty of a
30 public offense punishable by imprisonment in a county
31 jail for a term not exceeding one year, or by a fine not
32 exceeding one hundred thousand dollars (\$100,000), or
33 by both that imprisonment and fine; or by imprisonment
34 in the state prison for 16 months, or two or three years, or
35 by a fine of not more than two hundred fifty thousand
36 dollars (\$250,000) , or by both that imprisonment and
37 fine; and in either case, if the defendant is a corporation
38 or a limited liability company, the fine shall not be less
39 than two hundred fifty thousand dollars (\$250,000) but
40 may not exceed two million dollars (\$2,000,000).

1 (b) If the conviction is for a violation committed after
2 a first conviction of the defendant for any crime involving
3 a violation of subdivision (a), punishment shall be by
4 imprisonment in the state prison for two, three, or four
5 years, or by a fine not exceeding two hundred fifty
6 thousand dollars (\$250,000), or by both that fine and
7 imprisonment, but if the defendant is a corporation or a
8 limited liability company, the fine shall not be less than
9 one million dollars (\$1,000,000) but may not exceed four
10 million dollars (\$4,000,000).

11 (c) However, a court may impose a fine for a violation
12 of this section less than the minimum specified in this
13 section if the court finds that it is in the interest of justice
14 to do so and states its findings and reasons on the record.

15 (d) This section does not prohibit a prosecution under
16 Section 192 of the Penal Code.

17 ~~SEC. 15.—~~

18 *SEC. 14.* Section 6427 of the Labor Code is amended
19 to read:

20 6427. Any employer who violates any occupational
21 safety or health standard, order, or special order, or any
22 provision of this division or of Section 25910 of the Health
23 and Safety Code, and the violation is specifically
24 determined not to be of a serious nature, may be assessed
25 a civil penalty of up to seven thousand dollars (\$7,000) for
26 each violation.

27 ~~SEC. 16.—~~

28 *SEC. 15.* Section 6428 of the Labor Code is amended
29 to read:

30 6428. Any employer who violates any occupational
31 safety or health standard, order, or special order, or any
32 provision of this division or of Section 25910 of the Health
33 and Safety Code, if that violation is a serious violation,
34 shall be assessed a civil penalty of up to twenty-five
35 thousand dollars (\$25,000) for each violation. Employers
36 who do not have an operative injury prevention program
37 shall receive no adjustment for good faith of the employer
38 or history of previous violations as provided in paragraphs
39 (3) and (4) of subdivision (c) of Section 6319.

40 ~~SEC. 17.—~~

1 *SEC. 16.* Section 6429 of the Labor Code is amended
2 to read:

3 6429. Any employer who willfully or repeatedly
4 violates any occupational safety or health standard, order,
5 or special order, or any provision of this division or of
6 Section 25910 of the Health and Safety Code, may be
7 assessed a civil penalty of not more than seventy thousand
8 dollars (\$70,000) for each violation, but in no case less
9 than five thousand dollars (\$5,000) for each willful
10 violation.

11 (b) Any employer who repeatedly violates any
12 occupational safety or health standard, order, or special
13 order, or any provision of this division or of Section 25910
14 of the Health and Safety Code, shall not receive any
15 adjustment of a penalty assessed pursuant to this section
16 on the basis of the regulations promulgated pursuant to
17 subdivision (c) of Section 6319 pertaining to the good
18 faith of the employer or the history of previous violations
19 of the employer.

20 (c) Any past violation by any employer occurring
21 anywhere within the state within the previous five years
22 of any occupational safety or health standard, order, or
23 special order, or any provision of this division or of Section
24 25910 of the Health and Safety Code, shall be used to
25 establish whether a current violation is a repeat violation,
26 and shall constitute evidence of willfulness for purposes
27 of this section.

28 (d) The division shall preserve and maintain records
29 of its investigations and inspections and citations for a
30 period of not less than seven years.

31 ~~SEC. 18.~~

32 *SEC. 17.* Section 6430 of the Labor Code is amended
33 to read:

34 6430. (a) Any employer who fails to correct a
35 violation of any occupational safety or health standard,
36 order, or special order, or any provision of this division or
37 of Section 25910 of the Health and Safety Code, within the
38 period permitted for its correction shall be assessed a civil
39 penalty of not more than twenty-five thousand dollars

1 (\$25,000) for each day during which the failure or
2 violation continues.

3 (b) Notwithstanding subdivision (a), for any
4 employer who submits a signed statement affirming
5 compliance with the abatement terms pursuant to
6 Section 6320, and is found upon a reinspection not to have
7 abated the violation, any adjustment to the civil penalty
8 based on abatement shall be rescinded and the additional
9 civil penalty assessed for failure to abate shall not be
10 adjusted for good faith of the employer or history of
11 previous violations as provided in paragraphs (3) and (4)
12 of subdivision (c) of Section 6319.

13 (c) Notwithstanding subdivision (a), any employer
14 who submits a signed statement affirming compliance
15 with the abatement terms pursuant to subdivision (b) of
16 Section 6320, and is found not to have abated the
17 violation, is guilty of a public offense punishable by
18 imprisonment in a county jail for a term not exceeding
19 one year, or by a fine not exceeding one hundred
20 thousand dollars (\$100,000), or by both that fine and
21 imprisonment; but if the defendant is a corporation or a
22 limited liability company the fine shall be not less than
23 one hundred thousand dollars (\$100,000) but not exceed
24 one million dollars (\$1,000,000). However, a court may
25 impose a fine for a violation of this subdivision in an
26 amount less than the minimum specified in this
27 subdivision if the court finds that it is in the interest of
28 justice to do so and states its findings and reasons on the
29 record.

30 ~~SEC. 19.—~~

31 *SEC. 18.* Section 6432 of the Labor Code is amended
32 to read:

33 6432. (a) As used in this part, a “serious violation”
34 shall be deemed to exist in a place of employment if any
35 of the following conditions exist:

36 (1) There is a substantial probability that death or
37 serious physical harm could result from a violation,
38 including, but not limited to, any of the following
39 circumstances:

1 (A) An exposure exceeding an established permissible
2 exposure limit.

3 (B) The existence of an unsafe or unhealthful
4 condition.

5 (C) The existence of one or more practices, means,
6 methods, operations, or processes which have been
7 adopted or are in use, in the place of employment.

8 (2) The violation results in occupational injuries or
9 illnesses that are indicative of a condition that may result
10 in serious physical harm.

11 (b) Notwithstanding subdivision (a), a serious
12 violation shall not be deemed to exist if the employer can
13 demonstrate that it did not, and could not with the
14 exercise of reasonable diligence, know of the presence of
15 the violation.

16 (c) As used in this section, “substantial probability”
17 refers not to the probability that an accident or exposure
18 will occur as a result of the violation, but rather to the
19 probability that death or serious physical harm will result
20 assuming an accident or exposure occurs as a result of the
21 violation. A substantial probability of serious injury also
22 shall exist if any single serious injury has been caused by
23 the violation.

24 ~~SEC. 20.—~~

25 ~~SEC. 19.~~ Section 6434 of the Labor Code is repealed.

26 ~~SEC. 21.~~ ~~Section 6435 of the Labor Code is amended~~
27 ~~to read:~~

28 ~~6435. Any corporation or limited liability company~~
29 ~~and every employer who creates a hazard, controls the~~
30 ~~work or premises, or is responsible for correction of a~~
31 ~~hazard, who violates any of the requirements of Chapter~~
32 ~~6 (commencing with Section 6500) of this part shall be~~
33 ~~assessed a civil penalty under the appropriate provisions~~
34 ~~of Sections 6427 to 6430, inclusive.~~

35 ~~SEC. 22.—~~

36 ~~SEC. 20.~~ Section 6719 is added to the Labor Code, to
37 read:

38 6719. The Legislature reaffirms its concern over the
39 prevalence of repetitive motion injuries in the workplace
40 and reaffirms the Occupational Safety and Health

1 Standards Board's continuing duty to carry out Section
2 6357.

3 ~~SEC. 23.~~

4 *SEC. 21.* No reimbursement is required by this act
5 pursuant to Section 6 of Article XIII B of the California
6 Constitution because the only costs that may be incurred
7 by a local agency or school district will be incurred
8 because this act creates a new crime or infraction,
9 eliminates a crime or infraction, or changes the penalty
10 for a crime or infraction, within the meaning of Section
11 17556 of the Government Code, or changes the definition
12 of a crime within the meaning of Section 6 of Article
13 XIII B of the California Constitution.

